

ORIGINAL  
PIPER & MARBURY

1200 NINETEENTH STREET, N.W.  
WASHINGTON, D. C. 20036  
202-861-3900  
TELECOPIER 202-223-2085  
CABLE PIPERMAR WSH  
TELEX 904246

RECEIVED

JAN - 3 1989

Federal Communications Commission  
Office of the Secretary

WRITER'S DIRECT NUMBER

(202) 861-3914

1100 CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
BALTIMORE, MARYLAND 21201  
301-539-2530

January 3, 1989

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

JAN 5 1989

FM EXAMINERS

Re: File No. BRH-880926UJ

Dear Ms. Searcy:

On behalf of Jose Oaks, please find enclosed for filing the original and four copies of a "Petition To Deny" the above-referenced application for renewal of license of FM Station WKSJ, Jupiter, Florida. Please note that the statement of Jose Oaks in support of the Petition is being filed unsigned. The signed original will be submitted shortly.

Do not hesitate to call the undersigned counsel should there be any question about this matter.

Very truly yours,

  
Nora E. Garrote

Enclosures

JAN - 3 1989

**Federal Communications Commission  
Office of the Secretary**

File No. BRH-880926UJ

Jose Oaks ("Petitioner"), by his attorney and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1), and Sections 73.3584(a) and 73.3516(e) of the Commission's rules, hereby petitions that the Commission deny the above-captioned application of U.S. Three Broadcasting Corp. (the "Applicant") for renewal of the license of FM broadcast station WKSX. Petitioner resides seasonally and has a place of business within the listening area of WKSX and, thus, qualifies as a party in interest under Section 73.3584(a) of the Commission's rules. See Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966); Metromedia, Inc., 43 R.R.2d 583, 587 (1978). As there are substantial and material questions of fact tending to establish that the grant of Applicant's application would be inconsistent with the public interest, a hearing on the above-captioned application is warranted.

On September 18, 1984, Robert B. Taylor, (through a holding company) acquired ownership of the Applicant and station WKSJ (see Attachment A). Broadcast station WTRU (AM), Jupiter, Florida, is commonly owned by Mr. Taylor through another corporation. Recently, the Commission has granted consent to assign the licenses for these stations to Mr. Taylor personally (see BALH-881208GK, BAL-881208EC). Station WKSJ is the only FM station licensed to Jupiter. Station WTRU is one of two AM services licensed to Jupiter. Both of Mr. Taylor's stations, pursuant to Commission authority, have been silent since April 1987, pending Commission determination of a channel allocation matter.<sup>1/</sup>

There is, then, very little recent performance criteria under which to evaluate the public interest benefits of renewing Applicant's license under Mr. Taylor's ownership. There is, however, some objective indicia tending to establish that the Applicant's handling of the public trust immediately prior to receiving silence authority was far less than adequate.

Attached hereto (Attachment B) are copies of three complaints filed in March and April 1987 against the Applicant in Circuit Court for Palm Beach County, Florida, (Cases No. CL87-2174-AO, CL87-3260-AJ, and CL87-3130-AH) by three

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<sup>1/</sup> While only station WKSJ would be subject to the channel change, Mr. Taylor chose to also maintain station WTRU off-the-air.

listeners of station WKSJ.<sup>2/</sup> Each complaint contains similar allegations that, during October and November 1986, Applicant fraudulently used the station's facilities to promote Applicant-sponsored contests for which prizes were openly promised but never awarded. These complaints indicate that Applicant engaged in said fraudulent behavior in connection with a car show and two separate "Mid-Week Attitude Adjustment Parties" advertised over and sponsored by WKSJ. The complaints allege that Applicant repeatedly refused, on demand, to provide the prizes to the winning station listeners.

Section 73.1216 of the Commission's rules requires that:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest and shall conduct the contest as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

47 C.F.R. § 73.1216. Applicant, however, advertised that prizes could be won, announced the winners, but refused to relinquish the prizes. If the prizes were only illusory, Applicant should have disclosed it when broadcasting the terms of the contest. If originally Applicant meant to award prizes, then it conducted the contest not in accordance with the announced terms. Either way,

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<sup>2/</sup> One listener sent a note to the FCC to advise of the contests and complain about the station being off the air. See Attachment C.

in connection with at least three separate contests, the listening public was deceived and injured. See Catoctin Broadcasting Corp. of New York, 62 R.R. 2d 1132, 1150 (Rev. Bd. 1987)(app. for rev. pending).<sup>3/</sup>

In connection with Applicant's recent counterproposal to the Commission to prevent the allocation of a new FM Channel to Jupiter (MM Docket No. 88-366), Applicant submitted a statement (included herein as Attachment D) indicating that the attached complaints had been dismissed and that Applicant "handled this matter in a very fair and forthright manner with the parties concerned and was never charged with any wrongdoing." This explanation begs the point.

The cases were initially stagnant because the summonses could not be served on the Applicant. As reflected in the sheriff's statements attached to the Tucker and Mattingly complaints, station WKSJ was already silent, the physical facilities abandoned and no working phone numbers were available when the sheriff intended to serve the summonses. That, as suggested, Applicant later (at an unspecified time) may have settled this matter with the claimants, does not mean that the Commission should ignore the alleged misconduct. Otherwise, errand licensees could avoid adjudicated misconduct which

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<sup>3/</sup> See Colonial Broadcasting Co., Inc., 44 R.R. 2d 1191 (1978), WNST Radio, 44 R.R. 2d 492 (Rev. Bd. 1978), WMJX, Inc., 48 R.R. 2d 1339 (1981).

reflects mishandling of the facilities licensed by the Commission to serve the public trust by merely advancing monetary or in-kind compensation if they are caught engaging in the misconduct. Needless to say, this approach would emasculate the notion of a licensee as a public trustee and would provide very little incentive for licensees to abide by high operational standards and the Commission's rules.<sup>4/</sup>

As Applicant's statement (Attachment D) avers, all the facts surrounding the alleged deceptive sponsorship and advertising of contests in derogation of the rights of Applicant's own listening public have yet to be established. Those facts, however, are within the control of the Applicant, the claimants and other members of the listening public who witnessed the alleged contests. Applicant should have the burden to establish that what its listeners have termed "fraud" was not an abuse of its license and the public trust. Unless Applicant is able to do so, the allegations contained in the attached complaints reflect a pattern of repeated inability to conduct contests in accordance with the Commission's rules and raise a serious question of whether the Applicant can be relied upon to

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<sup>4/</sup> It is also questionable whether Applicant's statement in answer to Question 5 of its renewal application (Form 303-S, Attachment E hereto) that it has complied with the public inspection file rules is accurate since the station building where the file should be kept is closed-off to the public as indicated in the sheriffs' statements attached to the complaints.

be truthful to the public in its handling of the station's day-to-day operations.

The Commission carefully considers issues involving character qualifications as they provide the only criteria by which a licensee's job as a public trustee can be measured, particularly in connection with conduct reflecting violations of the Commission's rules. Character Qualifications in Broadcast Licensing, 59 R.R.2d 801 (1986). See KOED, Inc., 64 R.R.2d 1344 (Rev. Bd. 1988). Truthfulness and reliability are required traits for a broadcaster. 59 R.R. 2d at 809. In apparent violation of Section 73.1216 of the Commission's rules, Applicant broadcast and advertised information about a contest it conducted which has been alleged to be untrue and deceptive. Petitioner submits that these allegations provide a substantial and material question of fact warranting a hearing on this issue under Section 309(e) of the Communications Act. See Beaumont Branch of the NAACP v. FCC, 65 R.R.2d 367, 370 (D.C. Cir. 1988); Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 394-395 (D.C. Cir. 1985).

Respectfully submitted,

JOSE OAKS

By:   
Nora E. Garrote  
PIPER & MARBURY  
1200 Nineteenth, N.W.  
Suite 700  
Washington, D.C. 20036  
(202) 861-3900

His Attorneys

Date: January 3, 1989

STATEMENT

I, Jose Oaks, hereby declare under penalty of perjury, pursuant to Section 1.16 of the Commission's rules, that I have a place of business at 11218 Boca Woods Lane, Boca Raton, Florida 33428, c/o Urban Broadcasting, Inc., and have seasonally resided at 6479 Las Flores Drive, Boca Raton, Florida 33433, during this past year. It is also my current intention to relocate permanently to the Boca Raton area in 1989. These statements are true and correct.

\_\_\_\_\_  
Jose Oaks

Executed on \_\_\_\_\_





 *Unforgettable*

**WVSI** AM/FM  
Radio

OCT 15 1984

**"THE STATION OF THE STARS"**

September 18, 1984

Federal Communications Commission  
Attn: Office 8700  
Washington, D.C. 20554

RECEIVED BY

OCT 15 1984


RE: WVSI-FM, file number BTCH840521GP  
WVSI, file number BTC840521G0

Gentlemen:

The transfer of stock of U.S. Two Broadcasting Corp., U. S. Three Broadcasting Corp., and their parent R & R Broadcasting Corp. from Raymond E. Knappe to Robert Bostwick Taylor as authorized by the Federal Communications Commission on July 24, 1984, was consummated on September 18, 1984.

Enclosed are FCC Form 323 for both stations (Ownership Report).

Yours truly,

  
Robert B. Taylor, Pres.  
U.S. Two Broadcasting Corp.  
U.S. Three Broadcasting Corp.  
R & R Broadcasting Corp.

Enc.



IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY.

JAMES TUCKER,

Plaintiff,

vs.

U.S. THREE BROADCASTING  
CORP., a Florida corporation,

Defendant,

CASE NO. **CL 87-2174-AO**  
Florida Bar No. 267856  
4

COMPLAINT

GENERAL ALLEGATIONS

COMES NOW, the Plaintiff, JAMES TUCKER, by and through his undersigned attorneys and sues the Defendant, U.S. THREE BROADCASTING CORP. and alleges:

1. This is an action for damages in excess of \$5,000.00.
2. The Plaintiff is sui juris and a resident of Palm Beach County, Florida. All acts complained of herein took place in Palm Beach County, Florida.
3. The Defendant, U.S. THREE BROADCASTING CORP. is a Florida corporation in good standing which owns and operates WKSX 97 FM, a radio station in Jupiter, Florida.

COUNT I

BREACH OF CONTRACT

4. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.
5. In October and November of 1986 the Defendant, U.S. THREE BROADCASTING CORP., through its radio station, advertised and conducted a series of "Mid-week Attitude Adjustment Parties" at various restaurants in Palm Beach County, Florida. The parties were advertised as including drawings for prizes. The prizes were advertised as including all expense paid vacations.

6. In response to and in reliance upon the Defendant's advertisements and promises of drawings for prizes the Plaintiff, JAMES TUCKER, attended a Mid-week Attitude Adjustment Party sponsored by the Defendant at Parker's Lighthouse Restaurant on October 22, 1986. The Plaintiff participated in the drawing. He was informed and it was broadcasted to the crowd and over the radio station that the Plaintiff had won a "all expense, five day, paid vacation for two to Hawaii". The declared value of the trip was \$9,000.00.

7. On November 26, 1986 the Plaintiff in response to and in reliance upon the Defendant's advertisements and promises of drawings for prizes, attended another Mid-week Attitude Adjustment party held and sponsored by the Defendant at Bristol's Restaurant on Singer Island in Palm Beach County, Florida. The Plaintiff again, participated in a drawing and was announced as a winner of an all expense paid vacation for two to the Bahamas (declared value \$3,000.00).

8. Plaintiff has made repeated demands upon the Defendant for his trips, however, the Defendant has refused and continues to refuse to provide or pay for same.

9. The Plaintiff has suffered damages in the amount of \$12,000.00 as a direct result of Defendant's breach of the parties agreement.

WHEREFORE, plaintiff demands judgment for the sum of \$12,000.00, together with cost of suit.

#### COUNT II

##### FRAUD

10. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.

11. In October and November of 1986 the Defendant, through its agents and employees advertised on its radio station and conducted a series of "Mid-week Attitude Adjustment Parties" in Palm Beach County restaurants. In promoting these parties the Defendant, on the air, promised drawings with all expense paid exotic vacations for the lucky winners.

12. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's party held at

Parker's Lighthouse Restaurant on October 22, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the plaintiff was announced as the winner of an all expense paid vacation for two to Hawaii with a declared value of \$9,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present at the party and to its radio listening audience.

13. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's party held at Bristol's Restaurant on Singer Island on November 26, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the plaintiff was announced as the winner of an all expense paid vacation for two to the Bahamas with a declared value of \$3,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present at the party and to its radio listening audience.

14. The Defendant's statements over the airways advertising its parties and drawing were specifically intended to induce the Plaintiff to attend the events, spend money at the participating restaurants, and participate in the drawings. The Plaintiff justifiably relied on the Defendant's inducements, attended the parties and won the drawings.

15. The Defendant's advertising statements and publically broadcasted announcement as to the Plaintiff, the winner of the drawing, actually receiving the promised vacations were false and made with the knowledge that they were untrue.

16. The Plaintiff has made demands upon the Defendant for the trips he won but the Defendant has refused his demands.

17. The Defendant's fraudulent scheme has damaged the Plaintiff by the time and expense in attending the parties, the loss value of the trips (\$12,000.00) and the humiliation and emotional distress resulting from Defendant's malicious trick.

WHEREFORE, Plaintiff demands compensatory damages in excess of \$12,000.00, punitive damages and cost of suit.

COUNT III

VIOLATION OF FLORIDA STATUTE SECTION 849.094

18. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.

19. The Defendant as operator, promoted and conducted a series of games in connection with the promotion and sale of its radio services in that during October and November of 1986 the Defendant, advertised on its radio station and conducted a series of "Mid-week Attitude Adjustment Parties" in Palm Beach County restaurants. In promoting these parties the Defendant, on the air, promised drawings with all expense paid exotic vacations for the lucky winners.

20. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's party held at Parker's Lighthouse Restaurant on October 22, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the Plaintiff was announced as the winner of an all expense paid vacation for two to Hawaii with a declared value of \$9,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present at the party and to its radio listening audience.

21. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's party held at Bristol's Restaurant on Singer Island on November 26, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the Plaintiff was announced as the winner of an all expense paid vacation for two to the Bahamas with a declared value of \$3,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present at the party and to its radio listening audience.

22. The Defendant's statements over the airways advertising its parties and drawing were specifically intended to induce the Plaintiff to attend the events, spend money at the participating restaurants, and participate in the drawings. The Plaintiff justifiably relied on the Defendant's inducements, attended the parties and won the drawings.

22. The Defendant failed to award the prizes offered and announced as won by the Plaintiff.

23. The Plaintiff has been damaged in the amount of \$12,000.00.

24. The Plaintiff has had to hire the undersigned attorneys and has agreed to pay them their reasonable fees for bringing and maintaining this action.

WHEREFORE, Plaintiff demands compensatory damages in excess of \$12,000.00, punitive damages, reasonable attorneys fees, and costs of suit herein.

INGALSBE, McMANUS, WIITALA & CONTOLE, P.A.

By: 

J. Terence McManus  
Post Office Box 14125  
North Palm Beach, FL 33408  
(305) 627-1180



Plaintiff James Tucker,

Court  
Case # Circuit  
CL-87-2174-AO  
Palm Beach

Defendant U. S. Three Broadcasting, etc.

Attorney J. Terence McManus, Esq.  
P.O. Box 14125  
North Palm Beach, Fl. 33408

Type of Writ SUMMONS & copy & copy of  
complaint

Serve U. S. THREE BROADCASTING  
Corp.,

Cost  
Service \$ 12.00  
Check 0147  
pd

Address 500 N. Delaware Blvd.  
Jupiter, Fl. 33458

Received this writ on the 26 Day of March A.D. 87 and served the same on the within named Corporation  
Party Garnishee Defendant Witness at M on the day of  
A.D. 19 in Palm Beach County, Florida.

☐ INDIVIDUAL  
By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading.

☐ SUBSTITUTE  
By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading by leaving the copies at (his/her) usual place of abode with any person residing therein above the age of 15 years, to wit:

(Name and Relationship) and informing the person of the contents thereof (as defined in F.S. 48.031 (1).)

☐ CORPORATE  
By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading

to as  
of said corporation: in the absence of the President, Vice President, Cashier, Treasurer, Secretary, General Manager, Director, Resident Agent or any officers. (as defined in F.S. 48.081)

☐ WITNESS  
By delivering a true copy of this writ with the date and hour of service endorsed thereon by me.

☐ SUBSTITUTE WITNESS  
By delivering a true copy of this writ with the date and hour of service endorsed thereon by me at (his/her) usual place of abode, with any person residing therein above the age of 15 years, to wit: and informing the person of the contents thereof.

(Name and Relationship) (as defined in F.S. 48.031 (2).)

☐ POSTING  
By posting on the premises located at a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of Pleadings attached as the above named tenant was not available for personal service.

☒ MISCELLANEOUS

The premises of the radio station appears to be unused for a period of time. The local phone number has been changed to 719/484-0580. I received no answer for another number given in City Search of 636-3194. Several attempts to reach Mr. McManus at this station were negative.

RICHARD P. WILLE, SHERIFF OF PALM BEACH COUNTY, FLORIDA

By Deputy Sheriff

UNEXECUTED

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY.

CANDY MATTINGLY,

Plaintiff,

vs.

U.S. THREE BROADCASTING  
CORP., a Florida corporation,

Defendant,

CASE NO.: **CL 87 - 3260**  
Florida Bar No. 267856

**AJ**

FILED  
MAR - 8 11 54 AM '87  
CLERK OF COURT

COMPLAINT

GENERAL ALLEGATIONS

COMES NOW, the Plaintiff, CANDY MATTINGLY, by and through her undersigned attorneys and sues the Defendant, U.S. THREE BROADCASTING CORP. and alleges:

1. This is an action for damages in excess of \$5,000.00.
2. The Plaintiff is sui juris and a resident of Palm Beach County, Florida. All acts complained of herein took place in Palm Beach County, Florida.
3. The Defendant, U.S. THREE BROADCASTING CORP. is a Florida corporation in good standing which owns and operates WKSX 97 FM, a radio station in Jupiter, Florida.

COUNT I

BREACH OF CONTRACT

4. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.
5. In November of 1986 the Defendant, U.S. THREE BROADCASTING CORP., through its radio station, advertised and conducted a car show at Jupiter Mall, Jupiter, Palm Beach County, Florida. The car show was advertised as including drawings for prizes. The prizes were advertised as including all expense paid vacations.
6. In response to and in reliance upon the Defendant's advertisements and promises of drawings for prizes the Plaintiff, CANDY MATTINGLY,

(1)

attended the car show sponsored by the Defendant at Jupiter Mall, on November 28, 29, and 30, 1986. The Plaintiff participated in the drawing. She was informed and it was broadcasted to the crowd and over the radio station that the Plaintiff had won a "all expense, five day, paid vacation for two to Acapulco". The value of the trip is in excess of \$3,000.00.

7. Plaintiff has made repeated demands upon the Defendant for her trip, however, the Defendant has refused and continues to refuse to provide or pay for same.

8. The Plaintiff has suffered damages in excess of \$3,000.00. as a direct result of Defendant's breach of the parties agreement.

WHEREFORE, Plaintiff demands judgment for a sum in excess of \$3,000.00, together with cost of suit.

#### COUNT II

##### FRAUD

9. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.

10. In November of 1986 the Defendant, through its agents and employees advertised on its radio station and conducted a car show at Jupiter Mall, Jupiter, Palm Beach County, Florida. In promoting the car show the Defendant, on the air, promised drawings with all expense paid exotic vacations for the lucky winners.

11. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's car show held at Jupiter Mall on November 28, 29 and 30, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the Plaintiff was announced as the winner of an all expense paid vacation for two to Acapulco with a declared value in excess of \$3,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present at the car show and to its radio listening audience.

12. The Defendant's statements over the airways advertising its car show and drawing were specifically intended to induce the Plaintiff to

attend the event, spend money at the participating stores, and participate in the drawings. The Plaintiff justifiably relied on the Defendant's inducements, attended the car show and won the drawing.

13. The Defendant's advertising statements and publically broadcasted announcement as to the Plaintiff, the winner of the drawing, actually receiving the promised vacations were false and made with the knowledge that they were untrue.

14. The Plaintiff has made demands upon the Defendant for the trip she won but the Defendant has refused her demands.

15. The Defendant's fraudulent scheme has damaged the Plaintiff by the time and expense in attending the car show, the loss value of the trip (a sum in excess of \$3,000.00) and the humiliation and emotional distress resulting from Defendant's malicious trick.

WHEREFORE, Plaintiff demands compensatory damages in excess of \$3,000.00, punitive damages in excess of \$5,000.00 and cost of suit.

#### COUNT III

#### VIOLATION OF FLORIDA STATUTE SECTION 849.094

16. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.

17. The Defendant as operator, promoted and conducted a series of games in connection with the promotion and sale of its radio services in that during November of 1986 the Defendant, advertised on its radio station and conducted a car show at Jupiter Mall, Jupiter, Palm Beach County, Florida. In promoting the car show the Defendant, on the air, promised drawings with all expense paid exotic vacations for the lucky winners.

18. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's car show held at Jupiter Mall on November 28, 29 and 30, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the Plaintiff was announced as the winner of an all expense paid vacation for two to Acapulco with a declared value in excess of \$3,000.00. The Defendant broadcasted the

Plaintiff's name and good fortune in winning the vacation to those present at the car show and to its radio listening audience.

19. The Defendant's statements over the airways advertising its car show and drawings were specifically intended to induce the Plaintiff to attend the event, spend money at the participating stores, and participate in the drawings. The Plaintiff justifiably relied on the Defendant's inducements, attended the car show and won the drawings.

20. The Defendant failed to award the prizes offered and announced as won by the Plaintiff.

21. The Plaintiff has been damaged in an amount in excess of \$3,000.00.

22. The Plaintiff has had to hire the undersigned attorneys and has agreed to pay them their reasonable fees for bringing and maintaining this action.

WHEREFORE, Plaintiff demands compensatory damages in excess of \$3,000.00, punitive damages in excess of \$5,000.00, reasonable attorneys fees, and costs of suit herein.

INGALSBE, MCMANUS, WIITALA & CONTOLE, P.A.

By: 

J. Terence McManus  
Post Office Box 14125  
North Palm Beach, FL 33408  
(305) 627-1180

Plaintiff Candy Mattingly

Court Circuit  
Case # CL-87-3260-AJ  
Palm Beach

Defendant U S Three Broadcasting, etc

Attorney J Terence McManus  
P O Box 14125  
North Palm Beach FL 33408Type of Writ SUMMONS & copy & copy  
complaint

Serve ROBERT B. TAYLOR

Cost  
Service \$ 12.00  
Check 0383  
pdAddress 500 No Delaware Blvd  
Jupiter FL 33458Received this writ on the 9 Day of April A.D. 19 87 and served the same on the within named            Corporation  
Party            Garnishee            Defendant            Witness at            M on the            day of             
A.D., 19            in Palm Beach County, Florida.

## INDIVIDUAL

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading.



## SUBSTITUTE

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading by leaving the copies at (his/her) usual place of abode with any person residing therein above the age of 15 years, to wit:

(Name and Relationship) and informing the person of the contents thereof (as defined in F.S. 48.031 (1).)



## CORPORATE

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading

to            as             
of said corporation: in the absence of the President, Vice President, Cashier, Treasurer, Secretary, General Manager, Director, Resident Agent or any officers. (as defined in F.S. 48.081)

## WITNESS

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me.



## SUBSTITUTE WITNESS

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me at (his/her) usual place of abode, with any person residing therein above the age of 15 years, to wit:            and informing the person of the contents thereof. (Name and Relationship) (as defined in F.S. 48.031 (2).)

## POSTING

By posting on the premises located at             
a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of Pleadings attached as the above named tenant was not available for personal service.

## MISCELLANEOUS

The given address is for the radio station WKSX. The premise appears abandoned. Phone numbers listed on the door are 1-636-3194 and 219/484-0580. Attorney's office advised.

RICHARD P. WILCE, SHERIFF OF PALM BEACH COUNTY, FLORIDA

By             
Deputy Sheriff

UNEXECUTED

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY.

KEITH KOEMM,  
Plaintiff,

vs.

U.S. THREE BROADCASTING  
CORP., a Florida corporation,  
Defendant,

CASE NO.:  
Florida Bar No. 267856

FILED  
87 APR -2 AM 11:41  
JOHN E. LONG, CLERK  
P.A.C.

COMPLAINT

GENERAL ALLEGATIONS

COMES NOW, the Plaintiff, KEITH KOEMM, by and through his undersigned attorneys and sues the Defendant, U.S. THREE BROADCASTING CORP. and alleges:

1. This is an action for damages in excess of \$5,000.00.
2. The Plaintiff is sui juris and a resident of Palm Beach County, Florida. All acts complained of herein took place in Palm Beach County, Florida.
3. The Defendant, U.S. THREE BROADCASTING CORP. is a Florida corporation in good standing which owns and operates WKSX 97 FM, a radio station in Jupiter, Florida.

COUNT I

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6. In response to and in reliance upon the Defendant's advertisements and promises of drawings for prizes the Plaintiff, KEITH KOEMM, attended

the car show sponsored by the Defendant at Jupiter Mall, on November 28, 29, and 30, 1986. The Plaintiff participated in the drawing. He was informed and it was broadcasted to the crowd and over the radio station that the Plaintiff had won a "all expense, five day, paid vacation for two to Acapulco". The value of the trip is in excess of \$3,000.00.

7. Plaintiff has made repeated demands upon the Defendant for his trip, however, the Defendant has refused and continues to refuse to provide or pay for same.

8. The Plaintiff has suffered damages in excess of \$3,000.00. as a direct result of Defendant's breach of the parties agreement.

WHEREFORE, Plaintiff demands judgment for a sum in excess of \$3,000.00, together with cost of suit.

#### COUNT II

##### FRAUD

9. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.

10. In November of 1986 the Defendant, through its agents and employees advertised on its radio station and conducted a car show at Jupiter Mall, Jupiter, Palm Beach County, Florida. In promoting the car show the Defendant, on the air, promised drawings with all expense paid exotic vacations for the lucky winners.

11. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's car show held at Jupiter Mall on November 28, 29 and 30, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the Plaintiff was announced as the winner of an all expense paid vacation for two to Acapulco with a declared value in excess of \$3,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present at the car show and to its radio listening audience.

12. The Defendant's statements over the airways advertising its car show and drawing were specifically intended to induce the Plaintiff to attend the event, spend money at the participating stores, and participate



in the drawings. The Plaintiff justifiably relied on the Defendant's inducements, attended the car show and won the drawing.

13. The Defendant's advertising statements and publically broadcasted announcement as to the Plaintiff, the winner of the drawing, actually receiving the promised vacations were false and made with the knowledge that they were untrue.

14. The Plaintiff has made demands upon the Defendant for the trip he won but the Defendant has refused his demands.

15. The Defendant's fraudulent scheme has damaged the Plaintiff by the time and expense in attending the car show, the loss value of the trip (a sum in excess of \$3,000.00) and the humiliation and emotional distress resulting from Defendant's malicious trick.

WHEREFORE, Plaintiff demands compensatory damages in excess of \$3,000.00, punitive damages in excess of \$5,000.00 and cost of suit.

#### COUNT III

#### VIOLATION OF FLORIDA STATUTE SECTION 849.094

16. The allegations in paragraphs 1, 2, and 3 are herein realleged as if fully set forth.

17. The Defendant as operator, promoted and conducted a series of games in connection with the promotion and sale of its radio services in that during November of 1986 the Defendant, advertised on its radio station and conducted a car show at Jupiter Mall, Jupiter, Palm Beach County, Florida. In promoting the car show the Defendant, on the air, promised drawings with all expense paid exotic vacations for the lucky winners.

18. The Plaintiff in response to Defendant's advertising and in hope of winning an exotic vacation attended the Defendant's car show held at Jupiter Mall on November 28, 29 and 30, 1986. The Plaintiff participated in the drawing conducted by the Defendant and the Plaintiff was announced as the winner of an all expense paid vacation for two to Acapulco with a declared value in excess of \$3,000.00. The Defendant broadcasted the Plaintiff's name and good fortune in winning the vacation to those present